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Attorneys for Defendant,  
NATIVIDAD MEDICAL CENTER

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA  
NORTHERN DISTRICT OF THE STATE OF CALIFORNIA  
SAN JOSE DIVISION

JIMMY D. HAWS, SETH DANIEL HAWS,  
and MIA SKYE HAWS, minors, by and through  
their guardian ad litem, CARRIE A. HAWS, and  
CARRIE A. HAWS, individually,

Plaintiffs,

v.

COUNTY OF MONTEREY, MICHAEL  
KANALAKIS, NATIVIDAD MEDICAL CENTER  
and DOES 1-300, inclusive,

Defendants.

**NO. C 07 02599 RS**

**DEFENDANT NATIVIDAD  
MEDICAL CENTER'S  
ANSWER TO COMPLAINT  
AND REQUEST FOR JURY  
TRIAL**

In answer to plaintiffs' unverified Complaint for Violation of Civil Rights and pursuant to  
Code of Civil Procedure, §431.30(d), defendant Natividad Medical Center alleges as follows:

**I. COMPLAINT**

**(Jurisdiction and Venue)**

1. To the extent plaintiffs; cause of action under Title 22 of the United States Code,  
Section 1983 and Title 28, Sections 1331 and 1343 is properly pled, defendant admits that this Court  
has jurisdiction over this proceeding.

1           2. Defendant denies unlawful acts or practices occurred and admits the remainder of  
2 paragraph 2.

3           3. Defendant admits plaintiffs filed a claim against this defendant January 18, 2007 which  
4 was rejected on March 13, 2007.

5           4. Defendant is without information sufficient to form a belief as to the veracity of the  
6 allegations contained in paragraph 4 and on that basis denies said allegations.

7           5. Defendant is without sufficient information to form a belief as to the veracity of the  
8 allegations contained in paragraph 5 and on that basis denies said allegations.

9           6. Defendant is without sufficient information to form a belief as to the veracity of the  
10 allegations contained in paragraph 6 and on that basis denies said allegations.

11           7. Defendant is without sufficient information to form a belief as to the veracity of the  
12 allegations contained in paragraph 7 and on that basis denies said allegations.

13           8. Defendant admits that Natividad Medical Center is a public hospital which does provide  
14 medical treatment to certain persons detained by the County in the Salinas jail.

15           9. Defendant is without sufficient information to form a belief as to the veracity of the  
16 allegations contained in paragraph 9 and on that basis denies said allegations.

17           10. Defendant is without sufficient information to form a belief as to the veracity of the  
18 allegations contained in paragraph 10 and on that basis denies said allegations.

19           11. Defendant is without sufficient information to form a belief as to the veracity of the  
20 allegations contained in paragraph 11 and on that basis denies said allegations.

21           12. Defendant is informed and believes the allegations of this paragraph are correct.

22           13. Defendant is without sufficient information to form a belief as to the veracity of the  
23 allegations of paragraph 13 and on that basis denies said allegations.

24           14. Defendant is without sufficient information to form a belief as to the veracity of the  
25 allegations of paragraph 14 and on that basis denies said allegations.

26           15. Defendant is without sufficient information to form a belief as to the veracity of the  
27 allegations of paragraph 15 and on that basis denies said allegations

28           16. Defendant is without sufficient information to form a belief as to the veracity of the

1 allegations of paragraph 16 and on that basis denies said allegations

2 17. Defendant is without sufficient information to form a belief as to the veracity of the  
3 allegations of paragraph 17 and on that basis denies said allegations

4 18. Defendant is without sufficient information to form a belief as to the veracity of the  
5 allegations of paragraph 18 and on that basis denies said allegations

6 19. Defendant is without sufficient information to form a belief as to the veracity of the  
7 allegations of paragraph 19 and on that basis denies said allegations

8 20. To the extent paragraph 20 alleges the physician who initially evaluated Jimmy Haws  
9 was an agent or employee of defendant Natividad Medical Center and to the extent paragraph 20  
10 may allege that agents or employees of answering defendant "delayed" transporting Jimmy Haws for  
11 a CT scan, said allegations are denied as are the remainder of the allegations in paragraph 20 of the  
12 Complaint.

13 21. Defendant admits that a CT scan was performed at approximately 1:30 p.m.;  
14 defendant admits the CT scan was read as showing a right hemispheric epidural hematoma;  
15 defendant admits Jimmy Haws departed from Natividad Medical Center at approximately 2:40 p.m.  
16 Defendant is without sufficient information to form a belief as to the veracity of the remaining  
17 allegations of paragraph 21 which are therefore denied.

18 22. This defendant denies any actions by agents or employees of Natividad Medical  
19 Center caused plaintiff to suffer any injury or damages and to that extent the allegations of paragraph  
20 22 are denied. As to the actions of other defendants, this answering defendant has insufficient  
21 information to form a belief as to the veracity of these allegations which are therefore denied.

22 23. This defendant denies any actions by agents or employees of Natividad Medical  
23 Center caused plaintiff to suffer any injury or damages and to that extent the allegations of paragraph  
24 23 are denied. As to the actions of other defendants, this answering defendant has insufficient  
25 information to form a belief as to the veracity of these allegations which are therefore denied.

26 24. This defendant denies any actions by agents or employees of Natividad Medical  
27 Center caused plaintiff to suffer any injury or damages and to that extent the allegations of paragraph  
28 24 are denied. As to the actions of other defendants, this answering defendant has insufficient

1 information to form a belief as to the veracity of these allegations which are therefore denied.

2 25. This defendant denies any actions by agents or employees of Natividad Medical  
3 Center caused plaintiff to suffer any injury or damages and to that extent the allegations of paragraph  
4 25 are denied. As to the actions of other defendants, this answering defendant has insufficient  
5 information to form a belief as to the veracity of these allegations which are therefore denied.

6 26. This defendant has insufficient information to form a belief as to the veracity of these  
7 allegations which are therefore denied.

8 27. This defendant has insufficient information to form a belief as to the veracity of these  
9 allegations which are therefore denied.

10 **FIRST CAUSE OF ACTION**

11 28. Defendant incorporates and realleges its response to all preceding paragraphs of this  
12 Answer.

13 29. Defendant is without sufficient information to form a belief as to the veracity of any  
14 of the allegations of paragraph 29 and are therefore denied.

15 30. Defendant is without sufficient information to form a belief as to the veracity of any  
16 of the allegations of paragraph 30 and are therefore denied.

17 31. To the extent this paragraph alleges that defendants other than Natividad Medical  
18 Center acted as alleged, this defendant is without sufficient information to form a belief as to the  
19 veracity of those allegations which are therefore denied.

20 32. To the extent this paragraph alleges that defendants other than Natividad Medical  
21 Center acted as alleged, this defendant is without sufficient information to form a belief as to the  
22 veracity of those allegations which are therefore denied.

23 33. Defendant is without sufficient information to form a belief as to the veracity of these  
24 allegations which are therefore denied.

25 **SECOND CAUSE OF ACTION**

26 34. This defendant realleges and incorporates by reference each of the preceding  
27 paragraphs of this Answer.

28 35. Defendant is without information sufficient to form a belief as to the content of any

1 Doe defendants and therefore all allegations are denied.

2 36. Defendant is without information sufficient to form a belief as to the content of any  
3 Doe defendants and therefore all allegations are denied.

4 37. Defendant is without information sufficient to form a belief as to the content of any  
5 Doe defendants and therefore all allegations are denied.

6 **THIRD CAUSE OF ACTION**

7 38. This defendant realleges and incorporates by reference all previous paragraphs of  
8 this Answer.

9 39. To the extent this paragraph alleges that emergency department physicians at  
10 Natividad Medical Center were agents or employees of Natividad Medical Center, the allegations of  
11 this paragraph are denied. As to other unnamed health care practitioners, defendant is unable, due to  
12 lack of identity, to form a belief as to the veracity of the allegations of this paragraph which are  
13 therefore denied.

14 40. This defendant has insufficient information in which to form a belief as to the  
15 veracity of these allegations which are therefore denied.

16 41. This defendant has insufficient information in which to form a belief as to the  
17 veracity of these allegations which are therefore denied.

18 42. This defendant has insufficient information in which to form a belief as to the  
19 veracity of these allegations which are therefore denied.

20 43. To the extent this paragraph alleges agents or employees of Natividad so acted, the  
21 allegations are denied. With respect to other defendants unnamed, defendant is without sufficient  
22 information to form a belief as to the veracity of these allegations which are therefore denied.

23 44. To the extent this paragraph alleges agents or employees of Natividad so acted, the  
24 allegations are denied. With respect to other defendants unnamed, defendant is without sufficient  
25 information to form a belief as to the veracity of these allegations which are therefore denied.

26 45. To the extent this paragraph alleges agents or employees of Natividad so acted, the  
27 allegations are denied. With respect to other defendants unnamed, defendant is without sufficient  
28 information to form a belief as to the veracity of these allegations which are therefore denied.

#### FOURTH CAUSE OF ACTION

## FIFTH CAUSE OF ACTION

53. Defendant has insufficient information or belief as to the veracity of the allegations of this paragraph which are therefore denied.

55. To the extent this paragraph alleges any of the said acts were committed by agents or employees of Natividad Medical Center, the allegations are denied. As to the remainder of the allegations of paragraph 55, defendant has insufficient information or belief as to the veracity of those allegations which are therefore denied.

56. This defendant realleges and incorporates by reference all previous paragraphs of this Answer.

6

1           58. To the extent this paragraph alleges agents or employees of Natividad Medical  
2 Center acted as alleged in paragraph 58, the allegations are denied. To the extent this paragraph  
3 alleges others acted in the manner alleged, defendant has insufficient information or belief as to the  
4 veracity of those allegations which are therefore denied.

5           59. To the extent this paragraph alleges agents or employees of Natividad Medical  
6 Center acted as alleged in paragraph 59, the allegations are denied. To the extent this paragraph  
7 alleges others acted in the manner alleged, defendant has insufficient information or belief as to the  
8 veracity of those allegations which are therefore denied.

9                                   **SEVENTH CAUSE OF ACTION**

10                           **(No allegations against this answering defendant)**

11                                   **FIRST AFFIRMATIVE DEFENSE**

12           The Complaint failed to state facts sufficient to constitute a cause of action against this  
13 answering defendant.

14                                   **SECOND AFFIRMATIVE DEFENSE**

15           The Complaint is barred by the appropriate statute of limitations as set forth in California  
16 Code of Civil Procedure, §§340.5 and that defendant reserves the right to request a separate trial in  
17 regard to this affirmative defense pursuant to California Code of Civil Procedure, §597.5.

18                                   **THIRD AFFIRMATIVE DEFENSE**

19           That the damages, if any, complained of by plaintiff were proximately caused by the  
20 negligence of firms, persons, corporations and/or entities other than this answering defendant and  
21 that said negligence comparatively reduces the percentage of any fault by this answering defendant,  
22 if any can be found, which negligence defendant expressly denies.

23                                   **FOURTH AFFIRMATIVE DEFENSE**

24           That plaintiff Jimmy Haws did not exercise ordinary care, caution or prudence to avoid  
25 the injuries alleged in the Complaint and that said injuries were directly and proximately caused and  
26 contributed to by the negligence of plaintiff Jimmy Haws.

27                                   **FIFTH AFFIRMATIVE DEFENSE**

28           That the injuries alleged in the Complaint were proximately caused by acts or events

1 which were unforeseen and unforeseeable and over which this defendant had no control.

2 **SIXTH AFFIRMATIVE DEFENSE**

3 That in the event defendant is found to be negligent which is expressly denied, this  
4 defendant may elect to introduce evidence of any amounts paid or payable as a benefit to plaintiffs  
5 pursuant to California Civil Code §3333.1.

6 **SEVENTH AFFIRMATIVE DEFENSE**

7 In the event defendant is found to be negligent, which is expressly denied, the non-  
8 economic damages shall not exceed the amount specified in California Code of Civil Procedure  
9 §3333.2.

10 **EIGHTH AFFIRMATIVE DEFENSE**

11 In the event this defendant is found to be negligent, which is expressly denied, defendant  
12 may elect to have future damages, in excess of the amount specified in California Code of Civil  
13 Procedure §667.7, paid in whole or in part as specified therein as periodic payments.

14 **NINTH AFFIRMATIVE DEFENSE**

15 In the event defendant is found to be negligent, which is expressly denied, the liability of  
16 defendant is limited by reason of C.C.P. §1431.2.

17 **TENTH AFFIRMATIVE DEFENSE**

18 As and for a separate and additional affirmative defense, defendant alleges that it may  
19 rely upon any and all further defenses which become available or appear during discovery of this  
20 action and hereby specifically reserves its right to amend this Answer, as of right or with leave of  
21 court, for the purpose of asserting additional affirmative defenses.

22 WHEREFORE, defendant prays that plaintiffs take nothing by reason of the Complaint  
23 and that this defendant have and recover judgment for costs of suit and for such other relief as the  
24 Court deems proper.

25 **DEMAND FOR JURY TRIAL**

26 Defendant respectfully demands that the present matter be set for jury trial.  
27  
28



1 Dated: June 22, 2007

SHEUERMAN, MARTINI & TABARI

2  
3 By \_\_\_\_\_  
4 DAVID SHEUERMAN  
5 Attorneys for Defendant,  
6 NATIVIDAD MEDICAL CENTER  
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**CASE NAME: Jimmy D. Haws, et al. V. County of Monterey, et al.**  
**U. D. DISTRICT COURT, NORTHERN DISTRICT, ACTION NO. C 07 02599 RS**

**PROOF OF SERVICE**

I am a resident of the United States. My business address is 1033 Willow Street, San Jose, CA 95125. I am employed in Santa Clara County where this service occurred. I am over the age of 18 years and not a party to the within cause. I am readily familiar with my employer's normal business practice for collection and processing of correspondence for mailing and facsimile. In the case of mailing [other than overnight delivery], the practice is that correspondence is deposited in the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

On June 22, 2006, I served the within: DEFENDANT NATIVIDAD MEDICAL CENTER'S ANSWER TO COMPLAINT AND REQUEST FOR JURY TRIAL on the PARTIES in said action as follows:

Counsel for Plaintiffs:  
Michael B. Moore, Esq.  
595 Market Street, Suite 1320  
San Francisco, CA 94105  
(415) 956-6500  
Fax: (415) 956-6580

Ralph W. Boroff, Esq.  
55 River Street, Suite 100  
Santa Cruz, CA 95060  
(831) 458-0502  
Fax: (831) 426-0159

Counsel for County of Monterey:  
Traci Kirkbride, Esq.  
Monterey County  
Office of the County Counsel  
168 West Alisal Street, 3<sup>rd</sup> Floor  
Salinas, CA 93901-2680  
(831) 755-5045  
Fax: (831) 755-5283

XX (BY MAIL) I caused and a true copy of each document identified above to be sealed in an envelope with first-class postage affixed. Each such envelope was deposited for collection and mailing that same day in the ordinary course of business in the United States mail at San Jose, California.

           (BY PERSONAL SERVICE) I caused a true copy of each document identified above to be delivered by hand to the offices of each addressee above.

           (BY OVERNIGHT DELIVERY) I caused a true copy of each document identified above to be sealed in an envelope to be delivered to an overnight carrier with delivery fees provided for, addressed of each addressee above.

           (BY FACSIMILE SERVICE) I caused each of the above-named documents to be delivered by facsimile transmission to the office at each fax number noted above at           , by use of facsimile machine telephone number (408) 295-9900. The facsimile machine used complied with CRC §2003(3), and no error was reported by the machine. A copy of the transmission record is attached to this declaration.

           (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

1 XXX (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at  
2 whose direction the service was made.

3  
4 Joy Bertrand